

BROTHERS OF CHARITY SERVICES CLARE

Banner House, Clare Road, Ennis, County Clare
T: 065 684 9400 F: 065 686 9769



BY EMAIL AND POST

The Information Commissioner,
Office of the Information Commissioner,
18 Lower Leeson St,
Dublin 2

**Matter: Brothers of Charity Services Clare ("BOC Clare")
Scheduling to the FOI Acts**

Dear Madam,

I am the Service Lead of the above company, which is a single member private company limited by shares. Its company number is 416987 and it was incorporated on 13 March, 2006.

As you will be aware, the Freedom of Information Act 1997 (Prescribed Bodies) Regulations 1999 (SI 329 of 1999) ("the Regulations") extended the remit of the Freedom of Information Act 1997 to bodies, organisations and groups specified in the First and Second Schedules to the Regulations.

In particular, paragraph 4 of the Regulations provided as follows:

"(1) Subject to paragraph (2) of this Regulation, the bodies, organisations and groups specified in the Second Schedule to these Regulations shall stand prescribed for the purposes of paragraph 1(5) of the First Schedule to the Freedom of Information Act, 1997.

(2) The Freedom of Information Act, 1997, shall apply to a body, organisation or group prescribed by paragraph (1) of this Regulation only as respects the functions of the body, organisation or group in so far as they relate to the provision of—

(a) mental health services, or

(b) services for persons with an intellectual disability."

LOVE AND RESPECT FOR ALL TOWARDS A FULL AND VALUED LIFE

Brothers of Charity Services Clare Limited, Banner House, Clare Road, Ennis, Co. Clare
Tel: 065 6849400 **Fax:** 065 6869769 **Website:** www.brothersofcharity.ie
Company Registration No: 416987, Registered in Dublin, Ireland **CHY No:** 15458
Directors: P. McGinley (Chairperson), A. O'Connor, M. Moore, P. Greally
Company Secretary: Michael Moore

www.brothersofcharityclare.ie

The Second Schedule, in relevant part, lists the following organisations:

- “1. Brothers of Charity, Our Lady of Good Counsel, Lota, Glanmire, Co. Cork;*
- 2. Brothers of Charity, Kilcronan House, Clarinbridge, Co. Galway;*
- 3. Brothers of Charity, Mid-West Region, Bawnmore, Limerick;*
- 4. Brothers of Charity, Lanesboro Street, Roscommon;*
- 5. Brothers of Charity, Belmont Park, Waterford”.*

Up to 2003, BOC Clare was part of Brothers of Charity, Mid-West region, which as you will note from the above schedule, is subject to the FOI Acts insofar as its functions relate to the provision of services for persons with an intellectual disability. BOC Clare also became a separate employer at that time, and entered into a separate Service Level Agreement with the HSE from that date.

In 2006, BOC Clare became a separate Company and was registered as such with the Companies Registration Office on 13 March, 2006.

S.6 of the FOI Acts provides that *“Subject to the provisions of this Act, every person has a right to and shall, on request therefore, be offered access to any record held by a **public body** ...”*

S. 2(1) of the FOI Acts states that *“public body”* shall be construed in accordance with the First Schedule to the FOI Acts.

Part 1 (5) The First Schedule states as follows:

“Each of the following shall be a public body for the purposes of this Act:

...

any body, organisation or group standing prescribed for the time being ...”

S. 2(1) provides that *“prescribed”* means prescribed by the Minister for Finance by regulations made under s. 3 of the FOI Acts. The phrase *“for the time being”* is not defined.

Following careful analysis of the above, it appears to us that BOC Clare does not currently stand prescribed to the FOI Acts and is therefore not subject to them.

I would like to emphasise that BOC Clare is anxious to comply with all legal obligations that apply to it. To date, BOC Clare has taken the view that it is subject to the legislation and has indeed appointed an FOI Officer who has attended several training sessions in relation to the legislation.

However, upon receipt of a request under S.7 of the FOI Acts from Mr Conor Ryan, a journalist of the Irish Examiner (copied on this correspondence), we undertook the analysis outlined above and came to the conclusion that, in fact, it appears that BOC Clare is not currently subject to the legislation. A copy of Mr Ryan's request is enclosed for your information.

While in principle BOC Clare would be happy to comply with the request received from Mr Ryan, not being subject to the FOI legislation raises a concern in relation to the applicability of S.45 of the FOI Acts. S.45 of the FOI Acts grants immunity from civil or criminal proceedings to a public body (and those supplying records to public bodies) in respect of a grant or grant in part of an access request.

However, it is clear that immunity will apply to such acts only to the extent that they were required or authorised by and complied with the provisions of the FOI Act, or were reasonably believed by the public body to have been so required or authorised.

I note that this means that a public body releasing records on foot of an FOI request is protected from actions for defamation and breach of data protection rights, for example.

However, if records are released other than in accordance with the FOI Acts, no such protection exists.

This means that if BOC Clare releases records in circumstances where it appears not to be subject to the FOI legislation, it would not have any defence under the FOI legislation to any civil or criminal proceedings brought against it, e.g. for defamation, or to a complaint to the Data Protection Commissioner for breach of a person's data protection rights.

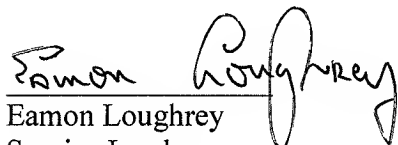
Accordingly, whereas BOC Clare wishes to be of assistance to Mr Ryan, we believe that at present we are unable, subject to the next paragraph below, to do so until the position regarding the scheduling of BOC Clare to the FOI Acts is clarified.

BOC Clare is happy to make a number of records available to Mr Ryan outside of the FOI process, namely the records falling under points 1 and 5 of his request. We do not maintain internal auditor's logs, so no records can be made available to Mr Ryan in respect of point 3 of his request in any event. The remaining items, namely points 2, 4, 6, 7 and 8, cannot be released outside of FOI primarily due to data protection, commercial sensitivity and confidentiality reasons.

I have written to Mr Ryan setting out this position and a copy of my letter is enclosed.

We would be most grateful for any assistance or clarification that you can provide in this regard.

Yours sincerely,


Eamon Loughrey

Service Lead

BROTHERS OF CHARITY SERVICES CLARE

c.c: Mr C. Ryan,
Investigative Correspondent,
Irish Examiner,
Lapps Quay,
Cork.